**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**
**CRIMINAL APPELLATE JURISDICTION**
**CRIMINAL WRIT PETITION NO.1488 OF 2001**

Girish Narayan Bhutkar ...Petitioner
vs.
Sou.Smita Girsh Bhutkar & Ors. ...Respondents

Mr.Ajay Patil i/b Ms Suhasini Mutalik for the Petitioner
Ms M.H.Mhatre,A.P.P. for State

**CORAM: A.S.OKA,J.**
**DATE : SEPTEMBER 21,2005**

**P.C.:**

1. Heard learned Advocate for the Petitioner. The Petitioner is the husband. The challenge is to the monthly allowance granted in favour of the Respondent No.1 in proceedings under Section 125 of the Code of Criminal Procedure, 1973. The learned Magistrate fixed the monthly allowance at Rs.1000/- from the date of application. The Revision Applications were preferred by both the parties for challenging the order of the learned Magistrate. The Revision Application preferred by the Respondent No.1 was allowed and the maintenance amount was enhanced to Rs.1250/- p.m.

2. The learned Advocate for the Petitioner submitted that the Petitioner has no income and therefore there was no reason to grant maintenance. He submitted that the Petitioner is ready and willing to co-habit with the Respondent No.1. It is the Respondent No.1 who refused to co-habit with the Petitioner and therefore the Respondent No.1 is not entitled to receive maintenance. He submitted that quantum of maintenance fixed at Rs.1250/-p.m. is excessive.

3. I have considered the submissions. There are concurrent findings recorded by both the Courts that the Petitioner has neglected to maintain the Respondent No.1 and that the Respondent No.1 does not possess sufficient means. The learned Magistrate has noted that after the Petitioner filed appearance in the Application under Section 125 of the said Code, he filed a Petition for divorce. Considering the oral evidence and the fact that the Petition for divorce was filed by the Petitioner, the learned Magistrate did not accept the case of the Petitioner that he was willing to maintain the Respondent No.1. The learned Magistrate did not accept the case which was tried to be made out by the Petitioner that the Respondent No.1 was earning sufficiently by doing tailoring work and by imparting tuitions. The findings of the learned Magistrate have been upheld by the Revisional Court. The case of the Respondent No.1 is that the Petitioner holds diploma in Civil Engineering. The learned Magistrate found that admittedly the Petitioner has acquired an Indica Car. The learned Magistrate found that the monthly instalment payable by the Petitioner for repayment of loan for purchasing the car is around Rs.5000/- p.m.

4. Considering the earning capacity and financial status of the Petitioner and his family, monthly maintenance of Rs.1250/- has been awarded.

5. No case is made out for interference under Article 227 of Constitution of India. Petition is dismissed.

**JUDGE**